

**REGULAR MEETING OF CASS COUNTY BOARD OF COMMISSIONERS
AUGUST 1, 2016**

1. MEETING CALLED TO ORDER

Chairwoman Mary Scherling called the meeting to order at 3:30 PM with members present as follows: Rick Steen, Arland H. Rasmussen, Chad M. Peterson, and Mary Scherling. Ken Pawluk was absent.

2. PLEDGE OF ALLEGIANCE

Brielle Edwards led the Pledge of Allegiance.

3. MINUTES APPROVED

MOTION, passed

Mr. Rasmussen moved and Mr. Steen seconded that the minutes of the previous meeting be approved as written. Motion carried.

4. AGENDA, Order approved

MOTION, passed

Mr. Peterson moved and Mr. Steen seconded to approve the order of the agenda. Motion carried.

5. CONSENT AGENDA APPROVED

MOTION, passed

Mr. Steen moved and Mr. Rasmussen seconded to approve the consent agenda as follows: On roll call vote, the motion carried unanimously.

- a. Amend Commission Policy Section 4.00, Advisory Boards and approve the appointment of Fargo Mayor Tim Mahoney to the Cass County Planning Commission.
- b. Authorize the closing of a section of Cass County Highway 10 (Main Street in Buffalo) from 5:00 PM to 9:00 PM on August 16, 2016, for the National Night to Unite in Buffalo, North Dakota. The road closure will only be used in case of inclement weather as the event is scheduled to be held at the softball park.
- c. Authorize the chair to sign the single audit certification form to monitor sub-recipients of federal awards to determine if they are in compliance with federal laws and regulations.
- d. Approve omitted assessments according to notices sent by the county auditor to the affected property owners.
- e. Authorize the Administrative Assistant position be moved to a B31 paygrade as recommended by Fox Lawson & Associates.

6. RESOLUTION #2016-18 AND #2016-19, Short-term financing for Metro Flood Diversion project

Attorney John Shockley was present to discuss two resolutions concerning short term financing for the Metro Flood Diversion project. Mr. Shockley said non-substantive changes pertaining to minor details are still being made to the resolutions. The tentative closing date for the loans is August 1st or September 1st.

Mr. Shockley said in 2014 and 2015 two loans in the amounts of \$50 million each were borrowed by Cass County and the City of Fargo respectively, from U.S. Bank for Diversion costs and ongoing liquidity purposes. The Diversion Finance Committee appointed a small team to seek information on securing an additional \$100 million loan in anticipation of an impending \$40 to \$50 million payment to the U.S. Army Corps of Engineers (USACE) this fall, which will fulfill a portion of the 5% local sponsor contribution required for the project. The team first approached U.S. Bank, but the lender was unable to meet the minimum needs of the current funding request. The team then approached other entities and it was determined that Wells Fargo could meet the needs with the most favorable terms.

Four \$50 million loans will be secured with Wells Fargo, for a total amount of \$200 million. The \$100 million U.S. Bank loan will be repaid, and the remaining \$100 million will go towards the USACE payment

and other ongoing Diversion costs. The loans are interest only at a variable interest rate until maturity. The loans will be secured with sales tax dollars, with a subordinate pledge by the City of Fargo's sales tax dollars.

Mr. Rasmussen asked if a fine will be issued for paying off the U.S. Bank loan early. Mr. Shockley said the date for facing penalization for settling the loan early has already passed so there is no fee.

MOTION, passed

Mr. Steen moved and Mr. Peterson seconded to adopt Resolution #2016-18, Resolution Authorizing Execution of Intergovernmental Agreement (Series 2016); Authorizing Loan from Wells Fargo Bank, N.A. to Cass County, North Dakota; and Consenting to Loan Agreements between Wells Fargo Bank, N.A. and the City of Fargo, North Dakota. On roll call vote, the motion carried unanimously:

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF THE INTERGOVERNMENTAL AGREEMENT (SERIES 2016); AUTHORIZING LOAN FROM WELLS FARGO BANK, N.A., TO CASS COUNTY, NORTH DAKOTA; AND CONSENTING TO LOAN AGREEMENTS BETWEEN WELLS FARGO BANK, N.A. AND THE CITY OF FARGO, NORTH DAKOTA
RECITATIONS

WHEREAS, the City of Fargo, North Dakota (the "City") and Cass County, North Dakota (the "County") are Member Entities to the Metro Flood Diversion Authority (the "Diversion Authority") and are authorized by Article XI of the Joint Powers Agreement¹ ("JPA") to cooperate in the issuance of Debt Obligations² for the LPP Flood Risk Management Features and the Recreation Features as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013 (the "Project"); and

WHEREAS, the City and the County previously determined it necessary to cooperate with each other with respect to obtaining interim financing (the "Series A Interim Debt Obligation")³ for planning, design and the construction of the Project; and

WHEREAS; the City and the County entered into an Intergovernmental Agreement, dated as of July 1, 2014 (the "Original Intergovernmental Agreement"), and a Supplemental Intergovernmental Agreement, dated as of May 1, 2015, (the "Supplemental Intergovernmental Agreement," together with the Original Intergovernmental Agreement, the "Intergovernmental Agreement"), relating to Series A Interim Debt Obligation, the pledge by the County of ninety-one percent (91%) of the proceeds generated by the one-half percent (1/2%) sales and use tax imposed by Ordinance No. 2010-2 of the County, (the "County 2010-2 Sales Tax") to the repayment of the Series A Interim Debt Obligation, and the pledge of the City of one hundred percent (100%) of the proceeds generated by the one-half percent (1/2%) sales and use tax imposed by Article 3-21 of the Fargo Municipal Code (the "City 3-21 Sales Tax") to the repayment of the Series A Interim Debt Obligation; and

¹ The Agreement effective as of June 1, 2016, between the City of Moorhead, a political subdivision of the State of Minnesota; the City of Fargo, a political subdivision of the State of North Dakota; Clay County, a political subdivision of the State of Minnesota; Cass County, a political subdivision of the State of North Dakota; and Cass County Joint Water Resource District, a political subdivision of the State of North Dakota, to establish the duties, responsibilities and obligations of each party regarding the Project.

² Any loan, note, bond, or other security instrument issued by one or more of the Member Entities to provide either temporary or permanent financing of the Project.

³ The Series A Interim Debt Obligation consists of the original U.S. Bank County Loan and the original U.S. Bank City Loan, collectively, in the principal amount of one hundred million dollars (\$100,000,000).

WHEREAS, in 2014, the Diversion Authority and the City requested proposals for tax-exempt direct funded loans or draw-down lines of credit from multiple institutions, including U.S. Bank, National Association (“U.S. Bank”); and

WHEREAS, the Diversion Authority, the County, and the City determined that the proposal of U.S. Bank was the lowest cost alternative; and

WHEREAS, the County entered into a Loan Agreement, dated as of July 1, 2014 (the “U.S. Bank County Loan Agreement”) for an initial loan from U.S. Bank in the maximum principal amount of \$50,000,000 (the “U.S. Bank County Loan”) as part of the Series A Interim Debt Obligation; and

WHEREAS, the City entered into a Loan Agreement, dated as of May 1, 2015 (the “U.S. Bank City Loan Agreement”), for an additional loan from U.S. Bank in the maximum principal amount of \$50,000,000 (the “U.S. Bank City Loan”), as part of Series A Interim Debt Obligation secured by the City 3-21 Sales Tax and the County 2010-2 Sales Tax; and

WHEREAS, the County and the City desire to prepay the U.S. Bank County Loan and the U.S. Bank City Loan by borrowing up to \$100,000,000 from Wells Fargo Bank, National Association (“Wells Fargo”) secured by the City 3-21 Sales Tax and the County 2010-2 Sales Tax, as applicable; and

WHEREAS, the County and the City have determined that the County will be the borrower of up to \$50,000,000 from Wells Fargo to prepay the U.S. Bank County Loan (the “County Refund Loan”) and that the City will be the borrower of up to \$50,000,000 from Wells Fargo to prepay the U.S. Bank City Loan (the “City Refund Loan”); and

WHEREAS, the City Refund Loan and the County Refund Loan will be authorized by separate resolution; and

WHEREAS, the County and the City have determined that the County will be the borrower of up to an additional \$50,000,000 from Wells Fargo, which loan (the “County Additional Loan”) constitutes a part of the Series B Interim Debt Obligation secured by a subordinate pledge of the City 3-21 Sales Tax and a first lien on the County 2010-2 Sales Tax; and

WHEREAS, the County and the City have determined that the City will be the borrower of up to an additional \$50,000,000 from Wells Fargo, which loan (the “City Additional Loan”)⁴ constitutes a part of the Series B Interim Debt Obligation secured by a subordinate pledge of the City 3-21 Sales Tax and a first lien on the County 2010-2 Sales Tax; and

WHEREAS, the County and the City have received proposals and terms from Wells Fargo for the County Refund Loan, the County Additional Loan, the City Refund Loan, and the City Additional Loan; and

WHEREAS, the County and the City desire to amend and reenact the Intergovernmental Agreement with the adoption of the Intergovernmental Agreement (Series 2016) dated as of August 1, 2016 (the “Intergovernmental Agreement (Series 2016)”), to specifically set forth agreements with respect to the County Refund Loan, the County Additional Loan, the City Refund Loan, and the City Additional Loan, and to prepay the U.S. Bank County Loan and the U.S. Bank City Loan; and

WHEREAS, the County desires to enter into the Temporary Sales Tax Note Purchase Agreement with Wells Fargo for the County Refund Loan (the “County Refund Loan Agreement”) and to issue its \$50,000,000 Temporary Sales Tax Revenue Note, Series 2016 for the County Refund Loan (the “County Refund Note”) to Wells Fargo in the principal amount of up to \$50,000,000 and bearing interest at the rate and containing such other terms as set forth in the forms thereof presented to the Board of Commissioners of the County at their meeting on the date hereof; and

⁴ The County Refund Loan, City Refund Loan, County Additional Loan, and City Additional Loan are collectively referred to as the Series B Interim Debt Obligation.

WHEREAS, the County desires to enter into a loan agreement with Wells Fargo for the County Additional Loan (the “County Additional Loan Agreement”) and to issue a promissory note for the County Additional Loan (the “County Additional Note”) to Wells Fargo, in the principal amount of up to \$50,000,000 and bearing interest at the rate and containing such other terms as set forth in the forms thereof presented to the Board of Commissioners of the County at their meeting on the date hereof; and

WHEREAS, the County has performed all other acts required by the constitution and laws of the State of North Dakota and the County’s home rule charter and ordinances prerequisite to entering into the County Refund Loan Agreement and the County Additional Loan Agreement, the County Refund Note and the County Additional Note, the Intergovernmental Agreement (Series 2016), and such other documents necessary to effect the loan for the purpose of providing temporary financing to pay the costs of the Project and prepay the U.S. Bank County Loan and U.S. Bank City Loan; and

WHEREAS, Article V of the Intergovernmental Agreement requires the non-issuing entity to consent to the issuance of debt by the issuing entity; and

WHEREAS, Section 11.03 of the JPA⁵ requires the Metro Flood Diversion Authority to approve and consent to the terms of any Debt Obligation, and the Diversion Authority Board has given its approval and consent to the Loan Agreement with Wells Fargo; and

WHEREAS, the County has reviewed the Temporary Sales Tax Revenue Note Purchase Agreement by and between the City of Fargo, North Dakota, and Wells Fargo, dated as of July 1, 2016, for the City Refund Loan and approves of the terms and conditions contained within the City Refund Loan Agreement; and

WHEREAS, the City has reviewed the Loan Agreement by and between the City of Fargo, North Dakota, and Wells Fargo, dated as of July 1, 2016, for the City Additional Loan and approves of the terms and conditions contained within the City Additional Loan Agreement.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED by the governing body of the County:

Section 1. Ratification and Confirmation. All acts performed, resolutions, motions, or ordinances adopted or passed, and all publications incidental to the construction and financing of the Project, the Original Intergovernmental Agreement, the Supplemental Intergovernmental Agreement, the Intergovernmental Agreement (Series 2016), the U.S. Bank County Loan Agreement and documents relating thereto, the U.S. Bank City Loan Agreement and documents relating thereto, the resolution of the County pledging the County 2010-2 Sales Tax and the resolution of the City pledging the City 3-21 Sales Tax, whether or not reflected in the official minutes and records of the County, are hereby ratified and confirmed, and all resolutions and other acts or proceedings of the County which are in any way inconsistent with this Resolution, are hereby amended to the extent necessary to give full force and effect to this Resolution.

Section 2. Refund Loan. The County Refund Loan Agreement and County Refund Note will be approved by separate resolution.

Section 3. Authorization of Additional Loan. It is hereby found and determined to be necessary for the County to borrow up to \$50,000,000 in principal from Wells Fargo, subject to the terms and conditions set forth in the County Additional Loan Agreement, the County Additional Note, and the Intergovernmental Agreement (Series 2016). The County is hereby authorized to borrow up to \$50,000,000 from Wells Fargo, to enter into the County Additional Loan Agreement, the Intergovernmental Agreement (Series 2016) and related documents, to issue the County Additional Note, and to pledge the County 2010-2 Sales Tax to the payment of, and as security for, the County Additional Loan and the County Refund Loan, which are on parity. The County is hereby authorized to pledge the County 2010-2 Sales Tax on a subordinate basis and in

⁵ JPA Section 11.03. PROCEDURE TO ISSUE DEBT OBLIGATIONS. The Member Entities agree and acknowledge that the precise terms and conditions of the Debt Obligations are unknown as of the Effective Date. The specific terms of the Debt Obligations will be set forth by written resolution adopted by the Metro Flood Diversion Authority and the Member Entity, and/or Member Entities, issuing the Debt Obligation.

accordance with the Intergovernmental Agreement (Series 2016) to the payment of and as a subordinate security for the City Refund Loan and the City Additional Loan for the purpose of providing financing for the costs of the Project.

Section 4. Approval and Consent of Wells Fargo Loans. The County hereby consents and approves of the City borrowing up to \$50,000,000 from Wells Fargo for the City Additional Loan secured by and payable solely from ninety-one percent (91%) of the pledged County 2010-2 Sales Tax and the City 3-21 Sales Tax, with interest payable at that variable rate set forth in the form of the City Additional Loan Agreement. The County hereby approves the City entering the City Additional Loan Agreement with Wells Fargo and issuing the City Additional Note relating thereto substantially in the forms presented to the County Commission at this meeting, with such changes, additions, or deletions as may be approved by the officers of the City signing such document, the Chairman or Vice Chairman of the Cass County Commission and the Cass County Auditor.

Section 5. Acceptance of Wells Fargo Proposals. The governing body of the County has received proposals from Wells Fargo for the City Additional Loan Agreement and the County Additional Loan Agreement which are hereby found and determined to be reasonable and advantageous and are hereby accepted by the County.

Section 6. Payment of Interest and Fees. The governing body of the County hereby authorizes the payment of any fees and interest associated with the U.S. Bank County Loan and/or County Additional Loan to be made from any funds on hand in the County 2010-26 Sales Tax fund.

Section 7. Authorization of Documents. The execution and delivery of the County Additional Loan Agreement, the County Additional Note, and the Intergovernmental Agreement (Series 2016) are hereby approved and authorized to be executed and delivered in substantially the same form presented to the County at this meeting on behalf of its Chair of the Cass County Commission and the Cass County Auditor (the "Authorized Officers"), with such modification as may be approved by the Authorized Officers. The Authorized Officers are authorized and directed to execute the County Additional Loan Agreement, the County Additional Note, and the Intergovernmental Agreement (Series 2016), and to deliver them to Wells Fargo, which execution and delivery will be conclusive evidence of the approval of any modifications with respect to the County Additional Loan Agreement, the County Additional Note, and the Intergovernmental Agreement (Series 2016).

The Chair of the Cass County Commission and the Cass County Auditor and other officers of the County, are hereby authorized and directed to execute and deliver such other necessary or appropriate agreements, certifications, and other documents in connection with the County Additional Loan, the County Additional Loan Agreement, the County Additional Note, and the Intergovernmental Agreement (Series 2016).

In the event of the absence or unavailability of the Chair of the Cass County Commission, the County Auditor, or other appropriate officer of the County, the documents authorized for execution and delivery pursuant to this section may be executed and delivered by the individual or individuals authorized generally by the County to act on behalf of such officer in such circumstances, including, without limitation, the Vice Chair of the Cass County Commission and the Deputy Cass County Auditor, as the case may be.

In case any officer signing documents authorized to be executed and delivered by this Resolution shall cease to be such officer before or after the delivery of any such documents, such signature, nevertheless, shall be valid and remain sufficient for all purposes as if such officer had remained in office until such delivery or later applicable time.

Section 8. Payment of Principal and Interest. Interest will be payable on the first Business Day of every calendar month and in accordance with the County Additional Loan Agreement. Principal of the County Additional Loan will be payable in full no later than the Maturity Date (as defined in the County Additional Loan Agreement).

Section 9. Use of Loan Proceeds. The proceeds of the County Additional Loan are irrevocably appropriated to pay expenses necessarily incurred in connection with the Project and to pay costs associated with the issuance of the County Additional Loan. Draws on the County Additional Loan will be submitted by the County to Wells Fargo from time to time in accordance with procedures established and set forth in the County Additional Loan Agreement.

Section 10. Deposit Account. The City will establish an account with Wells Fargo into which the proceeds of each Draw will be deposited for use in accordance with the Intergovernmental Agreement (Series 2016).

Section 11. Incorporated Terms and Conditions. The terms and conditions of the County Additional Loan Agreement, the County Additional Note, and the Intergovernmental Agreement (Series 2016), as amended, including the pledge of Sales and Use Tax Proceeds, are hereby incorporated by reference into this Resolution.

Section 12. Limited Obligation. The County Additional Loan Agreement, the County Additional Note, and the Intergovernmental Agreement (Series 2016), as amended, will not constitute a charge, lien, or encumbrance upon any property of the County, and the payment of principal and interest and other amounts due under the County Additional Loan Agreement, the County Additional Note, or the Intergovernmental Agreement (Series 2016) will not be a general obligation of the County, but are payable solely from the proceeds of the City 3-21 Sales Tax and the County 2010-2 Sales Tax as set forth in the Intergovernmental Agreement, as amended.

Section 13. Pledge of County 2010-2 Sales Tax. The County hereby pledges, on a subordinate basis, the proceeds generated by the County 2010-2 Sales Tax to the repayment of the City Additional Loan, including without limitation amounts due on the City Additional Note, the City Refund Loan, and the City Refund Note, including without limitation the amounts due on the County Additional Note, in each case in accordance with the Intergovernmental Agreement (Series 2016), as amended. The pledge of the proceeds generated by the County 2010-2 Sales Tax to the repayment of the City Additional Loan, the City Additional Note, the City Refund Loan, and the City Refund Note, is subordinate to the pledge of proceeds generated by the County 2010-2 Sales Tax to the repayment of the County Additional Loan, the County Additional Note, the County Refund Loan, and the County Refund Note.

The pledges of the County 2010-2 Sales Tax set forth in the “Resolution Dedicating Cass County Sales and Use Tax,” adopted by the Board of Commissioners of the County of July 31, 2014, and in the Intergovernmental Agreement (Series 2016), are hereby ratified and confirmed and remain in full force and effect until all amounts secured by such pledges have been paid in full.

Section 14. North Dakota Law Applies. This Resolution and any transactions contemplated herein will be controlled by the laws of the State of North Dakota.

Section 15. This Resolution shall take effect immediately upon adoption.

MOTION, passed

Mr. Steen moved and Mr. Peterson seconded to adopt Resolution #2016-19, Resolution Authorizing the Issuance of \$50,000,000 Temporary Sales Tax Revenue Note of 2016 of Cass County, North Dakota. On roll call vote, the motion carried unanimously:

**RESOLUTION AUTHORIZING THE ISSUANCE OF
\$50,000,000 TEMPORARY SALES TAX
REVENUE NOTE OF 2016
OF CASS COUNTY, NORTH DAKOTA**

WHEREAS, Cass County, North Dakota (the “County”), has adopted a Home Rule Charter in accordance with Chapter 11-09.1 of the North Dakota Century Code; and

WHEREAS, on November 2, 2010, the majority of the Electorate authorized Cass County to enact a one-half percent (1/2%) sales and use tax to be used for flood control projects; and

WHEREAS, pursuant to the Cass County Home Rule Charter and the authorization of the electorate of Cass County, the Cass County Board of County Commissioners adopted Ordinance #2010-2, (the “County Sales Tax Ordinance”) imposing a sales, use and gross tax of one-half percent (1/2%) that expires March 31, 2031 (the “County 2010-2 Sales Tax”, with the proceeds of this sales tax referred to as “County 2010-2 Sales Tax Revenue”); and

WHEREAS, the County Sales Tax Ordinance specifically provides that the County 2010-2 Sales Tax is dedicated for the engineering, land purchase, construction, and maintenance of a Red River Diversion and other flood control measures, or the payment of special assessments or debt incurred for a Red River Diversion, and other flood control measures as authorized by the Cass County Commission; and

WHEREAS, the City of Fargo, North Dakota (the “City”) and the County are Member Entities to the Metro Flood Diversion Authority (the “Diversion Authority”) and are authorized by Article XI of the Joint Powers Agreement⁶ (“JPA”) to cooperate in the issuance of Debt Obligations⁷ for the LPP Flood Risk Management Features and the Recreation Features as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013 (the “Project”); and

WHEREAS, the City and the County previously determined it necessary to cooperate with each other with respect to obtaining interim financing (the “Series A Interim Debt Obligation”)⁸ for planning, design and the construction of the Project; and

WHEREAS, the City and the County entered into an Intergovernmental Agreement, dated as of July 1, 2014 (the “Original Intergovernmental Agreement”), and a Supplemental Intergovernmental Agreement, dated as of May 1, 2015 (the “Supplemental Intergovernmental Agreement,” together with the Original Intergovernmental Agreement, the “Intergovernmental Agreement”), relating to Series A Interim Debt Obligation, the pledge by the County of ninety-one percent (91%) of the proceeds generated by the County 2010-2 Sales Tax to the repayment of the Series A Interim Debt Obligation, and the pledge of the City of one hundred percent (100%) of the proceeds generated by the one-half percent (1/2%) sales and use tax imposed by Article 3-21 of the Fargo Municipal Code (the “City 3-21 Sales Tax”, with the proceeds of this sales tax referred to as “City 3-21 Sales Tax Revenue”) to the repayment of the Series A Interim Debt Obligation; and

WHEREAS, the County and the City desire to prepay the U.S. Bank County Loan and the U.S. Bank City Loan by borrowing up to \$100,000,000 from Wells Fargo Bank, National Association (“Wells Fargo”) secured by and payable from a pledge of and lien on the City 3-21 Sales Tax and the County 2010-2 Sales Tax, as applicable; and

WHEREAS, the County and the City have amended and reenacted the Intergovernmental Agreement by entering into the Intergovernmental Agreement (Series 2016) dated as of August 1, 2016 (as amended,

⁶ The Agreement effective as of June 1, 2016, between the City of Moorhead, a political subdivision of the State of Minnesota; the City of Fargo, a political subdivision of the State of North Dakota; Clay County, a political subdivision of the State of Minnesota; Cass County, a political subdivision of the State of North Dakota; and Cass County Joint Water Resource District, a political subdivision of the State of North Dakota, to establish the duties, responsibilities and obligations of each party regarding the Project.

⁷ Any loan, note, bond, or other security instrument issued by one or more of the Member Entities to provide either temporary or permanent financing of the Project.

⁸ The Series A Interim Debt Obligation consists of the U.S. Bank County Loan and the U.S. Bank City Loan (both defined in Section 1 herein), collectively, in the aggregate principal amount of one hundred million dollars (\$100,000,000).

modified, supplemented or restated, the “Intergovernmental Agreement (Series 2016)”) to specifically set forth agreements with respect to the County Refund Loan, the County Additional Loan, the City Refund Loan, and the City Additional Loan, and to prepay the U.S. Bank County Loan and the U.S. Bank City Loan⁹; and

WHEREAS, the Intergovernmental Agreement and the Intergovernmental Agreement (Series 2016) provide that the County 2010-2 Sales Tax may be pledged to amortize bonds or other debt instruments which may be sold or otherwise permitted by the Cass County Board of Commissioners (the “Governing Body”); and

WHEREAS, the Governing Body of Cass County desires to issue the \$50,000,000 Temporary Sales Tax Revenue Note of 2016 for the purposes of providing funds for the Project and other flood control measures as authorized by the Cass County Commission and pledging the County 2010-2 Sales Tax Revenue (“County Pledged Revenue”) for the payment of the \$50,000,000 Temporary Sales Tax Revenue Note of 2016 (the “2016 Revenue Note”).

NOW, THEREFORE, BE IT RESOLVED by the governing body of Cass County, North Dakota (the “Issuer”), as follows:

Section 1. Definitions.

“2016 Revenue Note” means the \$50,000,000 Temporary Sales Tax Revenue Note of 2016 issued by Cass County, North Dakota.

“Additional Notes” means notes payable from the County 2010-2 Sales Tax Revenue issued by the Issuer in compliance with Section 9 of the Resolution that are issued on a parity to the 2016 Revenue Note, subject to the terms and conditions set forth in the Note Purchase Agreement and upon the written consent of Wells Fargo.

“Affiliate” means, with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.

“Applicable Law” means, collectively, the Constitutions of the United States and the State, all common law and principles of equity, and all federal, state and local laws including, without limitation, all environmental laws, statutes, treaties, codes, acts, rules, regulations, guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any governmental authority charged with the enforcement, interpretation or administration thereof, all governmental approvals, and all administrative orders, awards, directed duties, requests, licenses, certificates, authorizations and permits of, and agreements with, any governmental authority, and, with respect to any person, the articles of incorporation, bylaws or other organizational or governing documents of such person, in each case whether or not having the force of law, that are applicable now or are applicable at any time hereafter to (a) the County or the City, or (b) the Project.

“Authorized County Representative” means the President of the Board of County Commissioners and any other officer, member or employee of the County authorized by a certificate of the County Auditor to perform the act or sign the document in question, and if there is no such authorization, means the President of the Board of County Commissioners. Any document delivered hereunder that is signed by an Authorized County Representative shall be conclusively presumed to have been authorized by all necessary action on the part of the Governing Body and shall be conclusively presumed to have acted on behalf of the County.

“Business Day” means any day other than (a) a Saturday, Sunday or other day on which banks located in the cities in which the principal (or designated) office of the County is required or authorized by law to close, (b) a day on which the New York Stock Exchange is closed, or (c) a day on which the payment system of the Federal Reserve System is not operational.

⁹ The County Refund Loan, City Refund Loan, County Additional Loan, and City Additional Loan are collectively referred to as the Series B Interim Debt Obligation.

“City” means the City of Fargo, North Dakota.

“City 3-21 Sales Tax” means the one-half percent (1/2%) sales, use and gross tax upon all retail sales imposed by Article 3-21 of the Fargo Municipal Code.

“City Auditor” means the duly appointed City Auditor of the City of Fargo, North Dakota, or his designee.

“County” means Cass County, North Dakota.

“County 2010-2 Sales Tax” means the one-half percent (1/2%) sales, use and gross tax upon all retail sales imposed by the County Sales Tax Ordinance.

“County Auditor” means the duly appointed County Auditor of the County of Cass, North Dakota, or his designee.

“County Pledged Revenue” means the pledge of the County 2010-2 Sales Tax Revenue and the subordinate pledge of the City 3-21 Sales Tax as set forth in Section 6 of this Resolution.

“County Sales Tax Ordinance” means Ordinance No. 2010-2 of the Board of County Commissioners of Cass County, North Dakota, which imposes the County 2010-2 Sales Tax upon the gross receipts of retailers from all retail sales as defined by the North Dakota Century Code.

“Governing Body” means the Board of County Commissioners of Cass County, North Dakota.

“Intergovernmental Agreement” shall mean the agreement by and between Cass County and the City of Fargo, dated July 1, 2014, as amended.

“Intergovernmental Agreement (Series 2016)” shall mean the Intergovernmental Agreement (Series 2016) dated as of August 1, 2016, by and between Cass County and the City of Fargo for disbursement of the Cass County Sales/Use Tax Proceeds, as the same may be amended, modified, supplemented or restated in accordance with the terms thereof and the Note Purchase Agreement.

“Issuer” means the County.

“Joint Powers Agreement” means the agreement effective as of June 1, 2016, between the City of Moorhead, a political subdivision of the State of Minnesota; the City of Fargo, a political subdivision of the State of North Dakota; Clay County, a political subdivision of the State of Minnesota; Cass County, a political subdivision of the State of North Dakota; and Cass County Joint Water Resource District, a political subdivision of the State of North Dakota, to establish the duties, responsibilities and obligations of each party regarding the Project.

“Member Entity” shall mean the City of Moorhead, the City of Fargo, Clay County, Cass County, or Cass County Joint Water Resource District, which are parties to the Joint Powers Agreement. The term Member Entity does not include the City of West Fargo, North Dakota, Richland County, North Dakota, or Wilkin County, Minnesota.

“Note Purchase Agreement” means the Temporary Sales Tax Revenue Note Purchase Agreement dated as of August 1, 2016, by and between Cass County, North Dakota, as issuer, and Wells Fargo Bank, National Association, as the same may be amended, modified, supplemented or restated in accordance with the terms thereof.

“Note Year” means August 16, 2016 through July 31, 2017, of the next year.

“Paying Agent” means the City of Fargo, North Dakota, acting as Fiscal Agent, its successors and assigns.

“**Project**” has the same meaning as provided and set forth above in the introductory whereas clauses of this Resolution.

“**Required Payments**” means (a) all Payments, and (b) all other amounts, charges, costs, fees (including reasonable attorneys’ fees), expenses and sums due the Purchaser under the Note Purchase Agreement and the other Related Documents, whether in the form of a direct reimbursement, or indemnity, payment obligation, and including all payment obligations of the County to the Purchaser arising hereunder or under any other Related Document or otherwise with respect to the Note, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the County of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or similar proceeding, regardless of whether allowed or allowable in such proceeding), regardless of whether such interest and fees are allowed claims in such proceeding.

“**Resolution**” means this resolution by the Governing Body of Cass County, North Dakota, dated August 1, 2016, which authorizes the issuance of the \$50,000,000 Temporary Sales Tax Revenue Note of 2016 of Cass County, North Dakota.

“**State**” means the State of North Dakota.

“**U.S. Bank City Loan**” means a loan from U.S. Bank, N.A. to the City in the maximum aggregate amount of \$50,000,000, to be made pursuant to the terms and conditions of the Loan Agreement.

“**U.S. Bank City Loan Agreement**” means that certain Loan Agreement, dated May 1, 2015, by and between the City and the U.S. Bank, as amended from time to time.

“**U.S. Bank County Loan**” means a loan from U.S. Bank, N.A. to the County in the maximum aggregate amount of \$50,000,000, made pursuant to the terms and conditions of the U.S. Bank County Loan Agreement.

“**U.S. Bank County Loan Agreement**” means that certain Loan Agreement, dated as of July 1, 2014, by and between the County and the U.S. Bank, as amended from time to time.

“**Wells Fargo**” means Wells Fargo Bank, National Association.

The Issuer hereby incorporates by reference the definitions contained in the Note Purchase Agreement.

Section 2. Authorization and Sale.

2.01. There is hereby authorized to be issued one note designated the Issuer's \$50,000,000 Temporary Sales Tax Revenue Note of 2016 (the “2016 Revenue Note”). The total principal amount of the 2016 Revenue Note shall not exceed \$50,000,000. The Chair of the Board of County Commissioners and County Auditor shall have the authority to determine the final dollar amount and the amortization schedule for the 2016 Revenue Note *without further action of the Governing Body of the County*.

2.02. It is hereby found and determined to be necessary for the County to accept a bid from Wells Fargo to purchase the 2016 Revenue Note upon the terms and conditions set forth in the Note Purchase Agreement. The County is hereby authorized to enter into the Note Purchase Agreement and related documents and using the proceeds thereof to prepay the U.S. Bank County Loan.

Section 3. Consent to City Refund Loan.

3.01. The County hereby consents and approves of the City entering into a Temporary Sales Tax Note Purchase Agreement with Wells Fargo, and the issuance by the City of its \$50,000,000 Temporary Sales Tax Revenue Note of 2016.

Section 4. Term of 2016 Revenue Note.

4.01. The 2016 Revenue Note shall initially be dated the date of its issuance. The 2016 Revenue Note shall be issued in fully registered form in denominations of \$250,000, and any integral multiple of \$5,000 in excess thereof, of single maturities. The 2016 Revenue Note shall be numbered in consecutive numerical order from R-1 upwards as issued and shall mature on July 31, 2017, in the amounts and shall bear interest at the rates set forth in the Note Purchase Agreement.

4.02. Interest on the 2016 Revenue Note and, upon presentation and surrender thereof, the principal thereof shall be payable in lawful money of the United States of America by check, draft or electronic transfer by the Paying Agent, or its successor. Interest shall be payable in accordance with the Note Purchase Agreement, to the holder of record on the close of the last Business Day of the immediately preceding month. Interest on the 2016 Revenue Note shall cease at maturity or on a date prior thereto on which they have been duly called for redemption unless the holder thereof shall present the same for payment and payment is refused.

4.03. The 2016 Revenue Note matures on July 31, 2017, and it may be redeemed at any time on the terms and conditions set forth in the Note Purchase Agreement.

Section 5. Execution and Delivery.

5.01. The 2016 Revenue Note shall be prepared under the supervision and at the direction of the County Auditor, executed by the manual signature of the Chair of the Board of County Commissioners, and attested to by the manual signature of the County Auditor and delivered to the holder at closing upon receipt of the purchase price plus any accrued interest. The 2016 Revenue Note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under this Resolution until the Certificate of Authentication thereon shall have been executed by the Bond Registrar by manual signature of one of its authorized representatives. The 2016 Revenue Note shall be reproduced in substantially the form attached to this Resolution as Attachment 1.

Section 6. Funds.

6.01. Revenue Fund. There is hereby established a Revenue Fund. All of the County Pledged Revenue shall be deposited by the Issuer into the Revenue Fund in accordance with this Resolution. The Metro Flood Diversion Authority Fiscal Agent (the "City of Fargo") shall, withdraw the County Pledged Revenue from the Revenue Fund the Required Payments from the proceeds of the County 2010-6 Sales Tax Revenue received in the prior thirty (30) days and distribute the County Pledged Revenue to the 2016 Revenue Note Fund as set forth in this resolution.

6.02. FM Diversion Project Fund. There shall be an FM Diversion Project Fund that shall be established and maintained as a separate fund and used only to pay costs and expenses, which under accepted accounting practices constitute capital costs necessarily incurred to construct the Project, including, but not limited to, land, easements, buildings, structures, machinery and equipment, and the cost of all architectural, engineering, legal and other professional services, printing and publication and other costs reasonable, necessary and incidental thereto, including issuance costs. To this fund shall be credited all proceeds of the 2016 Revenue Note. Only costs and expenses of the Project shall be paid from time to time as incurred and allowed under the Project Fund, and the monies in the Project Fund should be used for no other purposes. If upon the completion of the Project there shall remain any unexpended balance in the Project Fund, such balance shall be transferred to the 2016 Revenue Note Fund.

6.03. 2016 Revenue Note Fund. As long as the 2016 Revenue Note is outstanding, the Issuer shall maintain a Temporary Sales Tax Revenue Note of 2016 Fund, (the "2016 Revenue Note Fund") as a separate and special bookkeeping account on the official books and records of the Issuer, to be used for no other purpose than the payment of the principal of and interest on the 2016 Revenue Note. Commencing on August 16, 2016, each and every month of the Note Year (August 16, 2016 through July 31, 2017) the Issuer shall deposit all of the County Pledged Revenue into the 2016 Revenue Note Fund until the total deposits in any month equal to the estimated maximum required monthly payment for the first month of the Note Purchase Agreement and then every month thereafter, the estimated required monthly payment based upon the prior month's required payment of the Required Payments. Provided, that while the 2016 Revenue Note is Outstanding, and after the Issuer has deposited the Required Payments in any Note Year, then the Issuer is

not required to deposit any of the County 2010-2 Sales Tax Revenue into the 2016 Revenue Note Fund and is permitted to use the County Pledged Revenues for any legal purpose.

6.04. Reserve Fund. The Issuer is not required to establish a reserve fund.

Section 7. Dedication of County 2010-2 Sales Tax Revenue.

7.01. Pledge of County 2010-2 Sales Tax Revenue. The Issuer hereby dedicates and pledges for payment of the principal of and interest on the 2016 Revenue Note, and any notes issued to refund the 2016 Revenue Note, the County 2010-2 Sales Tax Revenue and any sums it receives pursuant to the Intergovernmental Agreement (Series 2016). Such dedication shall be irrevocable and constitute a contract with the Note Holder so long as any principal of or interest on the 2016 Revenue Note, or any notes issued to refund the 2016 Revenue Note, remains outstanding and unpaid.

7.02. Not General Obligations. The 2016 Revenue Note is not a general obligation of the County. The 2016 Revenue Note is a special limited obligation of the County payable solely from the County Pledged Revenue. The 2016 Revenue Note will never constitute an indebtedness, a general or moral obligation, or a charge against the general credit or taxing powers of the County or any property of the County (other than those interests assigned pursuant to this Resolution), and no holder of the 2016 Revenue Note shall have the right to compel the exercise of the taxing power or the appropriation of any other funds or revenues of the County to the payment of the principal of, or premium, or interest on the 2016 Revenue Note.

Section 8. Covenants.

8.01. Until the 2016 Revenue Note, including any additional parity notes, have been discharged as herein provided, the Issuer does hereby covenant and agree with the purchaser and holders thereof from time to time that the Issuer will fully and properly perform each and all of the covenants contained and referred to in this Resolution and in the form of the 2016 Revenue Note attached to this Resolution, and each and all of the duties prescribed in the Intergovernmental Agreement.

8.02. The Issuer covenants and agrees with the holders from time to time of the 2016 Revenue Note that it will not take or permit to be taken by any of its officers, employees, or agents, any action which would cause the 2016 Revenue Note to become private activity bonds or would otherwise cause the interest on the 2016 Revenue Note to become subject to taxation under the Internal Revenue Code of 1986 (the "Code"), and regulations, amended regulations, and proposed regulations issued thereunder, as now existing or as hereinafter amended or proposed and in effect at the time of such action. The Issuer further covenants to make any necessary rebate payments required under the Code and regulations.

Section 9. Additional Notes.

9.01. The Issuer reserves the right of issuing Additional Notes payable from the County Pledged Revenue in accordance with the Note Purchase Agreement.

9.02. Except as authorized in Section 9.01 hereof, the Issuer will issue no Additional Notes or other obligations of any kind payable from or constituting a lien upon the County Pledged Revenue dedicated and pledged to the payment of the 2016 Revenue Note unless the lien thereof is expressly made junior and subordinate to the lien on the then outstanding 2016 Revenue Note, and such additional notes or obligations shall not be payable from the 2016 Revenue Note Fund herein created. Provided, the issuer shall issue no Additional Notes or other obligations of any kind payable from or constituting a lien upon the County Pledged Revenue on parity with the 2016 Revenue Note without written consent of the 2016 Revenue Note Holder, and such consent will not be unreasonably withheld.

Section 10. Defeasance.

10.01. When the 2016 Revenue Note has been discharged as provided in this paragraph, all pledges, covenants, and other rights granted by this Resolution shall cease as to the holders of such 2016 Revenue Note. Any and all of the 2016 Revenue Note due on any date, together with interest equal to the maximum rate as defined in the Note Purchase Agreement, may be discharged by depositing with the paying agent, on or before the date, a sum sufficient for the payment of all amounts due under the Note Purchase Agreement,

with interest, in full; and if the Note should not be paid when due, the same may nevertheless be discharged by depositing with the paying agent a sum sufficient for the payment of all amounts due under the Note Purchase Agreement in full, together with interest equal to the maximum rate as defined in the Note Purchase Agreement, with interest accrued from the due date to the date of such deposit. The County may discharge any or all of the 2016 Revenue Note at any time, when authorized by law, by irrevocably depositing in escrow with a suitable banking institution, for the purpose of paying all principal and interest due on such 2016 Revenue Note at maturity, a sum of cash, together with interest equal to the maximum rate as defined in the Note Purchase Agreement, sufficient for this purpose, or securities in such aggregate face amount bearing interest at such rates and maturing or callable at the option of the holder on such dates as shall be required, with any additional cash deposited, to provide funds sufficient for this purpose. The securities to be so deposited shall be limited to cash or direct obligations of (including obligations issued or held in book entry form on the books of the Department of the Treasury) the United States or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

Section 11. Paying Agent and Bond Registrar.

11.01. The Issuer hereby designates the City of Fargo as Paying Agent and Bond Registrar for the 2016 Revenue Note.

Section 12. Limited Obligations.

12.01. *The 2016 Revenue Note issued hereunder shall not constitute a charge, lien or encumbrance upon any property of the Issuer, and no holder or holders thereof shall ever have the right to compel any exercise of the taxing power of the County to pay the principal or interest on the 2016 Revenue Note, other than the County Pledged Revenue herein dedicated for the payment of the 2016 Revenue Note. The principal and interest of the 2016 Revenue Note shall not be a general obligation of the Issuer, but are payable solely from the County Pledged Revenue authorized and dedicated to the payments of the 2016 Revenue Note and the funds in the 2016 Revenue Note Fund and the Reserve Fund.*

Section 13. Certificate of Proceedings.

13.01. The officers of the Issuer are hereby authorized and directed to prepare and furnish to said purchaser, and to the attorneys approving the legality of said 2016 Revenue Note, certified copies of such proceedings, ordinances, resolutions and records, and all such certificates and affidavits and other instruments as may be required to evidence the legality and marketability of said 2016 Revenue Note, and all certified copies, certificates, affidavits and other instruments so furnished, including any heretofore furnished, shall constitute representations of the Issuer as to the correctness of all facts stated or recited therein.

Section 14. Book Entry System.

14.01. The Bonds shall be initially issued in physical form and, so long as they remain in book entry form only (the "Book Entry Only Period"), shall at all times be in the form of a separate single fully registered Bond for each maturity of the Bonds. The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York or any of its successors or successors to its functions hereunder (the "Depository") will act as securities depository for the Bonds.

14.02. Upon initial issuance, ownership of the Bonds shall be registered in a bond register maintained by the Bond Registrar in the name of CEDE & CO., as the nominee (it or any nominee of the existing or a successor Depository, the "Nominee").

14.03. With respect to the Bonds, neither the Issuer nor the Bond Registrar shall have any responsibility or obligation to any broker, dealer, bank, or any other financial institution for which the Depository holds Bonds as securities depository (the "Participant") or the person for which a Participant holds an interest in the Bonds shown on the books and records of the Participant (the "Beneficial Owner"). Without limiting the immediately preceding sentence, neither the Issuer, nor the Bond Registrar, shall have any such responsibility or obligation with respect to (A) the accuracy of the records of the Depository, the Nominee or any Participant with respect to any ownership interest in the Bonds, or (B) the delivery to any Participant, any Owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any notice of redemption, or (C) the payment to any Participant, any Beneficial Owner or any other person, other than the Depository, of

any amount with respect to the principal of or premium, if any, or interest on the Bonds, or (D) the consent given or other action taken by the Depository as the Registered Holder of any Bonds (the "Holder"). For purposes of securing the vote or consent of any Holder under this Resolution, the Issuer may, however, rely upon an omnibus proxy under which the Depository assigns its consenting or voting rights to certain Participants to whose accounts the Bonds are credited on the record date identified in a listing attached to the omnibus proxy.

14.04. The Issuer and the Bond Registrar may treat as and deem the Depository to be the absolute owner of the Bonds for the purpose of payment of the principal of and premium, if any, and interest on the Bonds, for the purpose of giving notices of redemption and other matters with respect to the Bonds, for the purpose of obtaining any consent or other action to be taken by Holders for the purpose of registering transfers with respect to such Bonds, and for all purpose whatsoever. The Bond Registrar, as paying agent hereunder, shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the Holder or the Holders of the Bonds as shown on the bond register, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to the principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid.

14.05. Upon delivery by the Depository to the Bond Registrar of written notice to the effect that the Depository has determined to substitute a new Nominee in place of the existing Nominee, and subject to the transfer provisions in Section 17 (with respect to registration, transfer, exchange) hereof, references to the Nominee hereunder shall refer to such new Nominee.

14.06. So long as any Bond is registered in the name of a Nominee, all payments with respect to the principal of and premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, by the Bond Registrar or Issuer, as the case may be, to the Depository as provided in the Letter of Representations, to the Depository required by the Depository as a condition to its acting as book-entry Depository for the Bonds (said Letter of Representations, together with any replacement thereof or amendment or substitute thereto, including any standard procedures or policies referenced therein or applicable thereto respecting the procedures and other matters relating to the Depository's role as book-entry Depository for the Bonds, collectively hereinafter referred to as the "Letter of Representations").

14.07. All transfers of beneficial ownership interests in each Bond issued in book-entry form shall be limited in principal amount to Authorized Denominations and shall be effected by procedures by the Depository with the Participants for recording and transferring the ownership of beneficial interests in such Bonds.

14.08. In connection with any notice or other communication to be provided to the Holders pursuant to this Resolution by the Issuer or Bond Registrar with respect to any consent or other action to be taken by Holders, the Depository shall consider the date of receipt of notice requesting such consent or other action as the record date for such consent or other action; provided, that the Issuer or the Bond Registrar may establish a special record date for such consent or other action. The Issuer or the Bond Registrar shall, to the extent possible, give the Depository notice of such special record date not less than 15 calendar days in advance of such special record date to the extent possible.

14.09. Any successor Bond Registrar in its written acceptance of its duties under this Resolution and any paying agency registrar agreement shall agree to take any actions necessary from time to time to comply with the requirements of the Letter of Representations.

14.10. In the case of a partial prepayment of a Bond, the Holder may, in lieu of surrendering the Bonds for a Bond of a lesser denomination as provided in Section 17 hereof, make a notation of the reduction in principal amount on the panel provided on the Bond stating the amount so redeemed.

Section 15. Termination of Book-Entry Only System.

15.01. The Depository may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the Issuer and discharging its responsibilities with respect thereto under applicable law. The Issuer may terminate the services of the Depository with respect to the Bond if it

determines that the Depository is no longer able to carry out its functions as securities depository or the continuation of the system of book-entry transfers through the Depository is not in the best interests of the Issuer or the Beneficial Owners.

15.02. Upon termination of the services of the Depository as provided in the preceding paragraph, and if no substitute securities depository is willing to undertake the functions of the Depository hereunder can be found which, in the opinion of the Issuer, is willing and able to assume such functions upon reasonable or customary terms, or if the Issuer determines that it is in the best interests of the Issuer or the Beneficial Owners of the Bond that the Beneficial Owners be able to obtain certificates for the Bonds, the Bonds shall no longer be registered as being registered in the bond register in the name of the Nominee, but may be registered in whatever name or names the Holder of the Bonds shall designate at that time, in accordance with Section 17 hereof. To the extent that the Beneficial Owners are designated as the transferee by the Holders, in accordance with Section 17 (with respect to registration, transfer, exchange) hereof, the Bonds will be delivered to the Beneficial Owners.

15.03. Nothing in this section shall limit or restrict the provisions of Section 17 (with respect to registration, transfer, exchange) hereof.

Section 16. Letter of Representations.

16.01. *Reserved for future use.*

Section 17. Transfer.

17.01. Except as provided above, the 2016 Revenue Note, or the beneficial interest therein, is transferable upon the books of the Issuer at the principal office of the Bond Registrar, Fargo, North Dakota, by the registered owner thereof in person or by his attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Series Notes of other authorized denominations. Upon such transfer or exchange the Issuer will cause new Notes to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. No transfer of the 2016 Revenue Note shall be required to be made during the 15 (fifteen) days next preceding an interest payment date, nor during the forty-five (45) days next preceding the date fixed for redemption of such 2016 Revenue Note.

The 2016 Revenue Note may be transferred without limitation to any Affiliate of Wells Fargo or to a trust or custodial arrangement established by the Purchaser or an Affiliate of Wells Fargo, each of the beneficial owners of which are “qualified institutional buyers” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended and subject to the limitations, if any, set forth in the Note Purchase Agreement. The 2016 Revenue Note may be transferred to another purchaser (other than an Affiliate of Wells Fargo or a trust or custodial arrangement as described in the preceding sentence) if (i) written notice of such transfer, together with addresses and related information with respect to such purchaser, is delivered to the County by such transferor and (ii) such purchaser shall have delivered to the County and the transferor an Investor Letter in the form attached to the Note Purchase Agreement executed by a duly authorized officer of such purchaser; *provided* that each such purchaser shall constitute (1) a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended, and (2) a commercial bank organized under the laws of the United States, or any state thereof, or any other country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of any such country, and, in any such case, having a combined capital and surplus, determined as of the date of any transfer pursuant to this Section, of not less than \$5,000,000.

17.02. The Issuer and the Bond Registrar may deem and treat the person in whose name any 2016 Revenue Note is registered as the absolute owner thereof, whether the 2016 Revenue Note is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the Issuer nor the Bond Registrar shall be affected by any notice to the contrary.

Section 18. Repealer.

18.01. All prior resolutions and other acts or proceedings of this governing body which are in any way inconsistent with the terms of this Resolution are hereby amended to the extent necessary to give full force and effect to this Resolution.

Nothing herein contained shall be deemed to modify, amend, violate, repudiate or repeal any provision or covenant contained in any 2016 Revenue Note, or any resolution pursuant to which any 2016 Revenue Note has been issued and is outstanding, to the extent that a modification, amendment, violation, repudiation or repealer would impair the obligation or contract owed to any holders of such 2016 Revenue Note or would otherwise be invalid or ineffective.

Section 19. Note Insurance.

19.01. *Reserved for future use.*

Section 20. 2016 Revenue Note Not Subject to Acceleration.

20.01. The 2016 Revenue Note is not subject to acceleration in the event of default.

Section 21. General Covenants.

21.01. The County hereby covenants and agrees with the Holders of all outstanding 2016 Revenue Note as follows:

- (a) That it will, to the extent the County Pledged Revenues are sufficient, promptly cause the principal and interest on the 2016 Revenue Note to be paid as they become due.
- (b) That it will maintain complete books and records in accordance with the Note Purchase Agreement.
- (c) That it will not issue Notes or other obligations having a claim superior to the claim of the 2016 Revenue Note upon the County Pledged Revenues.
- (d) That it will promptly deposit into the 2016 Revenue Note Fund all sums required to be so deposited.

Section 22. Amendment of Resolution.

22.01. This Resolution may be amended without the consent of any Holders for any one or more of the following purposes:

- (a) To add to the covenants and agreements of the County in this Resolution and any other covenants and agreements thereafter to be observed by the County, or to surrender any right or power herein reserved to or conferred upon the County.
- (b) To cure any ambiguity or formal defect contained in this Resolution, that cure does not, in the judgment of the County, adversely affect the interests of the Note owners.
- (c) To issue parity notes in accordance with Section 9 hereof.

22.02. This Resolution may be amended for any other purpose only upon the consent of not less than 50% an aggregate principal amount of the 2016 Revenue Note outstanding; provided, however, that no amendment shall be valid which:

- (a) Extends the maturity of any 2016 Revenue Note, reduces the rate of interest upon any 2016 Revenue Note, extends the time of payment of interest on the 2016 Revenue Note, reduces the amount of principal payable on any 2016 Revenue Note, or reduces any premium payable on any 2016 Revenue Note, without the consent of the affected Holder; or
- (b) Reduces the percent of Holders required to approve the mandatory resolutions.

Section 23. No Credit Enhancement.

23.01. There is no credit enhancement facility securing the 2016 Revenue Note, nor is there any provision for a credit enhancement facility to be provided to secure the 2016 Revenue Note.

Section 24. Temporary Sales Tax Revenue Note Purchase Agreement.

24.01. The Temporary Sales Tax Revenue Note Purchase Agreement, substantially in the form presented at this meeting, is hereby approved. The Temporary Sales Tax Revenue Note Purchase Agreement is authorized to be executed in the name of the County by the Chair of the Board of County Commissioners and County Auditor, at such time, if any, as they deem appropriate, or executed or attested to by other officers of the County, in substantially the form on file, but with all such changes therein, not inconsistent with the Act or other law, as may be approved by the officers executing the same, which approval shall be conclusively evidenced by execution thereof.

The Chair of the Cass County Commission and the Cass County Auditor and other officers of the County, are hereby authorized and directed to execute and deliver such other necessary or appropriate agreements, certifications, and other documents in connection with the Temporary Sales Tax Revenue Note Purchase Agreement, the 2016 Revenue Note, and the Intergovernmental Agreement (Series 2016).

In the event of the absence or unavailability of the Chair of the Cass County Commission, the County Auditor, or other appropriate officer of the County, the documents authorized for execution and delivery pursuant to this section may be executed and delivered by the individual or individuals authorized generally by the County to act on behalf of such officer in such circumstances, including, without limitation, the Vice Chair of the Cass County Commission and the Deputy Cass County Auditor, as the case may be.

In case any officer signing documents authorized to be executed and delivered by this Resolution shall cease to be such officer before or after the delivery of any such documents, such signature, nevertheless, shall be valid and remain sufficient for all purposes as if such officer had remained in office until such delivery or later applicable time.

Section 25. Records and Certificates.

25.01. The officers of the County are hereby authorized and directed to prepare and furnish to the Purchaser, and to the attorneys approving the legality of the issuance of the 2016 Revenue Note, certified copies of all proceedings and records of the County relating to the 2016 Revenue Note and to the financial condition and affairs of the County, and such other affidavits, certificates and information as are required to show the facts relating to the legality and marketability of the 2016 Revenue Note as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates and affidavits, including any heretofore furnished, shall be deemed representations of the County as to the facts recited therein.

Section 26. Intergovernmental Agreement.

26.01. The terms and conditions of the Intergovernmental Agreement Series 2016, as amended, are hereby incorporated into this Resolution by reference.

Section 27. Severability.

27.01. If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

Section 28. Headings.

28.01. Headings in this Resolution are included for convenience of reference only and are not a part hereof, and shall not limit or define the meaning of any provision hereof.

Section 29. North Dakota Law Applies.

29.01. This Resolution and any transactions contemplated herein will be controlled by the laws of the State of North Dakota.

Section 30. Effective Date.

30.01. This Resolution shall be effective upon the adoption of this Resolution by the Governing Body of the Cass County, North Dakota.

7. FLOOD SALES TAX, Metro Flood Diversion project dollars to be transferred to City of Fargo; deposited into Diversion Fund

Michael Montplaisir, County Auditor, said he and Fargo Finance Director Kent Costin have discussed depositing the city and county sales tax dollars dedicated to the Diversion Authority into a Diversion Fund. The fund would provide cash on hand to pay bills, facilitate better reporting of the cash financial position of the Diversion Authority, and it would prevent the continuing burden on Fargo to front funds for Diversion Authority expenditures.

The proposal is to deposit 91% of the flood sales tax funds directly into the account. The transfer of funds could be approved at the first county commission meeting of each month. A statement and balance sheet will be provided each month, and the process will ultimately be much less cumbersome. Dollars dedicated to projects outside of the diversion will not be affected.

Mr. Steen asked when Diversion Authority bills are paid in relation to when the bills are approved by the Diversion Finance Committee and the Diversion Authority. Mr. Montplaisir said bills received for services under approved contracts or task orders are paid as they are received. Bills not related to an approved contract are approved on an individual and monthly basis and are paid after approval.

MOTION, passed

Mr. Steen moved and Mr. Rasmussen seconded to transfer sales tax dollars dedicated to the Metro Flood Diversion project to the City of Fargo for deposit into the Diversion Fund. On roll call vote, the motion carried unanimously.

8. FLOOD DIVERSION MONTHLY BILLING, Approved

Mr. Montplaisir discussed the monthly billing for the Metro Flood Diversion Authority for June 2016, which includes the county's portion of costs for engineering, legal, program management, and accounting services.

MOTION, passed

Mr. Peterson moved and Mr. Steen seconded to approve the June 2016 billing for the Metro Flood Diversion Authority with the total cost to be paid in the amount of \$2,288,207.62. On roll call vote, the motion carried unanimously.

9. FLOOD CONTROL, State Water Commission reimbursement requests approved for Metro Flood Diversion Authority

During the last three legislative sessions, the state legislature approved a total of \$450 million to be spent on flood control costs. For consideration today is the 30th request from the Metro Flood Diversion Authority, which covers eligible costs of local matching share requirements of House Bill 1020 incurred from June 1, 2016, to June 30, 2016. The costs are for residential relocation assistance for homeowners displaced by in-town levees and the OHB levee; commercial relocation assistance for Oxbow Country Club; in-town levee projects; flood risk management projects for Rose Creek and 4th Street; demolition,

site restoration, and incidentals for the Belmont Park and Prairie Rose Additions; utility relocations for in-town levee projects; and land acquisitions that are part of home buyouts.

MOTION, passed

Mr. Steen moved and Mr. Peterson seconded to authorize the chair to sign reimbursement request #30 in the amount of \$3,681,747 to the State Water Commission to distribute funds to the Metro Flood Diversion Authority according to the terms and conditions of House Bill 1020. On roll call vote, the motion carried unanimously.

Also for consideration is the 31st request from the Metro Flood Diversion Authority, which covers engineering and construction management costs incurred from April 2012 through December 2015 that were not previously submitted and are intended to exhaust the administrative cap allotted under Senate Bill 2020.

MOTION, passed

Mr. Steen moved and Mr. Peterson seconded to authorize the chair to sign reimbursement request #31 in the amount of \$6,900,000 to the State Water Commission to distribute funds to the Metro Flood Diversion Authority according to the terms and conditions of Senate Bill 2020. On roll call vote, the motion carried unanimously.

10. SHERIFF'S OFFICE, Request for one full-time School Resource Deputy approved

Chief Deputy Sheriff Rick Majerus said the Sheriff's Office was notified that Central Cass School District is interested in obtaining a full-time School Resource Deputy (SRD) for the 2016-2017 school year. The national standard typically calls for the school to pay 75% of the wages and benefits for law enforcement officers in schools, and the law enforcement entity to pay the remaining amount and to provide the necessary equipment. As such, the request is to hire one full-time SRD for Central Cass School at a cost of \$21,185 to the county.

Sergeant Tim Briggeman supervises the School Resource Deputies and the program. Mr. Briggeman said the department will come up with the needed equipment; the only increase reflected in the budget will be the 25% salary and wage expense.

MOTION, passed

Mr. Rasmussen moved and Mr. Peterson seconded to authorize the Cass County Sheriff's Office to hire one full-time School Resource Deputy for Central Cass School District effective August 1, 2016. Discussion: Mr. Peterson said the figures on the documentation provided by the Sheriff's Office are inaccurate. Mr. Briggeman said the numbers on the letter were determined for the budgeting purposes of the school district, which has a different fiscal year than the county. On roll call vote, the motion carried unanimously.

11. CASS COUNTY COMPREHENSIVE PLAN, Contracted planning study with Metro COG

Hali Durand, County Planner, was present to discuss a contract with Metro COG for an update to the Cass County Comprehensive Plan, which has not been updated since 2005. There will be a 50/50 funding split pending final approval by NDDOT, with the possibility for federal funding of up to 80%. County costs will be split evenly between the Highway and Planning budgets over the 2017 and 2018 budgeting periods. Updating the Comprehensive Plan will also be a catalyst to update the Subdivision Ordinance.

MOTION, passed

Mr. Rasmussen moved and Mr. Steen seconded to approve a contracted planning study with a 50/50 split between Metro COG and Cass County for the 2017-2018 Metro COG Unified Planning Work Program to update the Cass County Comprehensive Plan. On roll call vote, the motion carried unanimously.

12. DIRECTOR OF EQUALIZATION RECRUITMENT

Keith Berndt, County Administrator, said the open Tax Director position was re-advertised due to a very small applicant pool. One additional application was received. Mr. Berndt recommends interviewing the applicant.

Mr. Berndt said there has also been discussion on the department structure that many other counties utilize, which is to have the Tax Director report directly to the County Auditor.

Mr. Rasmussen asked if the pay range for the Tax Director position would still be appropriate if it was no longer a department head position. Mr. Berndt said the pay grade would still be appropriate.

Mrs. Scherling recommended that the applicant be interviewed.

**13. VOUCHERS, Approved
MOTION, passed**

Mr. Steen moved and Mr. Peterson seconded to approve Voucher No. 294,730 through Voucher No. 294,966. On roll call vote, the motion carried unanimously.

14. FLOOD DIVERSION UPDATES; JAIL LAWSUIT; HOME RULE CHARTER OPINION; WEST CENTRAL REGIONAL JUVENILE CENTER; NACO CONVENTION; FLOOD SALES TAX MEASURE; MEETING UPDATE, Committee reports

Mr. Berndt said a response has been received from the Minnesota Department of Natural Resources (MN DNR) concerning the permit application for the Diversion Authority. The MN DNR was clear that they want to issue the permit before construction begins in the fall.

The Richland-Wilkin Joint Powers Authority has taken legal action against the state of Minnesota, claiming its environmental review was unlawful.

Birch Burdick, County State's Attorney, said the Cass County Jail is being sued by four inmates. Mr. Burdick sent the information to the North Dakota Insurance Reserve Fund (NDIRF) and will review the matter further.

Mr. Burdick said a complaint was heard at the last commission meeting regarding a potential violation of the Cass County Home Rule Charter concerning term limits for Cass County Commissioners. Mr. Burdick has prepared a memorandum stating his formal opinion. The memo also addresses who has the authority to interpret the Home Rule Charter. For the situation at hand, the County Auditor will ultimately decide what names are eligible to include on the ballot. Mr. Burdick will share the memo with all involved parties.

Mr. Peterson said he attended a meeting for the Clay County Juvenile Center, where it was brought to his attention that Cass County has, on average, not been utilizing the number of beds included in the current contract. After discussion with Mr. Berndt and Sheriff Laney, it was decided to reduce the daily bed reservation by one bed.

Mr. Peterson said he attended the National Association of Counties convention where he was educated in different methods being used across the country to manage rising jail populations and a program called Stepping Up, in which alternative treatment options to corrections are provided to those with chemical dependency and mental health issues. Mr. Peterson will possibly present on the program at the state convention this fall.

Mr. Montplaisir said language is still being finalized for a ballot measure to extend the sales tax. A resolution will be on the next commission agenda.

Commissioners and staff reported on meetings and seminars they have attended or will be attending in the upcoming weeks.

15. ADJOURNMENT

MOTION, passed

On motion by Mr. Peterson, seconded by Mr. Steen and all in favor, the meeting was adjourned at 4:58 PM.

ATTEST:

APPROVED:

Michael Montplaisir – Auditor
Cass County, North Dakota

Mary Scherling, Chairwoman
Cass County Board of Commissioners